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**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues Against:

Case No. 1H-2007-658

JUSTIN JOHN BENTON
9230 N. Rancho Park Circle
Rancho Cucamonga, CA 91730

STATEMENT OF ISSUES

Respondent.

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Statement of Issues solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about October 31, 2007, the Respiratory Care Board of California, Department of Consumer Affairs received an application for a Respiratory Care Practitioner License from JUSTIN JOHN BENTON (Respondent). On or about October 25, 2007, respondent certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on March 28, 2008.

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JURISDICTION

3. This Statement of Issues is brought before the Respiratory Care Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 3710 of the Code states: "The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the Respiratory Care Practice Act]."

5. Section 3718 of the Code states: "The board shall issue, deny, suspend, and revoke licenses to practice respiratory care as provided in this chapter."

6. Section 3732 of the Code states:

"(a) The board shall investigate an applicant for a license, before a license is issued, in order to determine whether or not the applicant has the qualifications required by this chapter.

"(b) The board may deny an application, or may order the issuance of a license with terms and conditions, for any of the causes specified in this chapter for suspension or revocation of a license, including, but not limited to, those causes specified in Sections 3750, 3750.5, 3752.5, 3752.6, 3755, 3757, 3760, and 3761."

7. Section 3750 of the Code states:

"The board may order the denial, suspension or revocation of, or the imposition of probationary conditions upon, a license issued under this chapter, for any of the following causes:

"...."

"(d) Conviction of a crime that substantially relates to the qualifications, functions, or duties of a respiratory care practitioner. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction.

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1 “(g) Conviction of a violation of any of the provisions of this chapter or of
2 any provision of Division 2 (commencing with Section 500), or violating, or
3 attempting to violate, directly or indirectly, or assisting in or abetting the violation
4 of, or conspiring to violate any provision or term of this chapter or of any provision
5 of Division 2 (commencing with Section 500).

6 “....”

7 “(j) The commission of any fraudulent, dishonest, or corrupt act which is
8 substantially related to the qualifications, functions, or duties of a respiratory care
9 practitioner.

10 “....”

11 8. Section 3752 of the Code states:

12 “A plea or verdict of guilty or a conviction following a plea of nolo
13 contendere made to a charge of any offense which substantially relates to the
14 qualifications, functions, or duties of a respiratory care practitioner is deemed to be
15 a conviction within the meaning of this article. The board shall order the license
16 suspended or revoked, or may decline to issue a license, when the time for appeal
17 has elapsed, or the judgment of conviction has been affirmed on appeal or when an
18 order granting probation is made suspending the imposition of sentence,
19 irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing
20 the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or
21 setting aside the verdict of guilty, or dismissing the accusation, information, or
22 indictment.”

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9. California Code of Regulations, title 16, section 1399.370, states:

“For the purposes of denial, suspension, or revocation of a license, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a respiratory care practitioner, if it evidences present or potential unfitness of a licensee to perform the functions authorized by his or her license or in a manner inconsistent with the public health, safety, or welfare. Such crimes or acts shall include but not be limited to those involving the following:

“(a) Violating or attempting to violate, directly or indirectly, or assisting or abetting the violation of or conspiring to violate any provision or term of the Act.

“(b) Conviction of a crime involving fiscal dishonesty theft, or larceny.

“(c) Conviction of a crime involving driving under the influence or reckless driving while under the influence.

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COST RECOVERY

10. Section 3753.5, subdivision (a) of the Code states:

"In any order issued in resolution of a disciplinary proceeding before the board, the board or the administrative law judge may direct any practitioner or applicant found to have committed a violation or violations of law to pay to the board a sum not to exceed the costs of the investigation and prosecution of the case."

11. Section 3753.7 of the Code states:

"For purposes of the Respiratory Care Practice Act, costs of prosecution shall include attorney general or other prosecuting attorney fees, expert witness fees, and other administrative, filing, and service fees."

12. Section 3753.1 of the Code states:

"(a) An administrative disciplinary decision imposing terms of probation may include, among other things, a requirement that the licensee-probationer pay the monetary costs associated with monitoring the probation. "

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1 **FIRST CAUSE FOR DENIAL OF APPLICATION**

2 **(Conviction of Crimes)**

3 13. Respondent's application is subject to denial under sections 3732,
4 3750, subdivision (d), of the Code, and California Code of Regulations, title 16, section
5 1399.370, subdivisions (a), (b), and (c), in that he was convicted of crimes substantially
6 related to the qualifications, functions, and/or duties of a respiratory care practitioner. The
7 circumstances are as follows:

8 **August 16, 2000, Conviction**

9 (a) On or about June 20, 2000, a Complaint was filed in the Superior
10 Court of the State of California, for the County of San Bernardino, case number
11 FWV020446, charging respondent with two counts of burglary [Penal Code § 459], and
12 one count of grand theft [Penal Code § 487, subdivision (a)], all felonies.

13 (b) On or about August 16, 2000, pursuant to a plea bargain, respondent
14 pled guilty to one count of burglary. Respondent was placed on supervised probation for 3
15 years, with various terms and conditions, and ordered to serve 365 days in county jail.

16 **August 6, 2002, Conviction**

17 (c) On or about March 11, 2002, a Complaint was filed in the Superior
18 Court of the State of California, County of Orange, case number 02WF0588, charging
19 respondent with possession of a firearm in violation of Penal Code sections 12021,
20 subdivision (d), and 12021.1, subdivision (a), carrying a concealed weapon in vehicle in
21 violation of Penal Code section 12025, subdivisions (a)(1) and (b)(1), receiving stolen
22 property in violation of Penal Code section 496, subdivision (a), and making criminal
23 threats in violation of Penal Code section 422, all felonies.

24 (d) On or about August 6, 2002, pursuant to a plea bargain, respondent
25 pled guilty to two counts of receiving stolen property in violation of Penal Code section
26 496, subdivision (a). Respondent was placed on 3 years formal probation, with various
27 terms and conditions, and ordered to serve 110 days in county jail.

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1 **May 13, 2003, Conviction**

2 (e) On or about March 26, 2002, a Complaint was filed in the Superior
3 Court of the State of California, for the County of San Bernardino, case number
4 TWV037240, charging respondent with filing a false report in violation of Vehicle Code
5 section 148.5, and failing to stop following an accident in violation of Vehicle Code
6 section 20002, subdivision (a).

7 (f) On or about May 13, 2003, pursuant to a plea bargain, respondent
8 pled guilty to violating Vehicle Code section 20002, subdivision (a). Respondent was
9 ordered to serve 30 days in county jail and pay restitution.

10 **December 21, 2005, Conviction**

11 (g) On or about January 10, 2005, a Complaint was filed in the Superior
12 Court of the State of California, County of Orange, case number 05WM00207, charging
13 respondent with driving under the influence of alcohol and/or drugs in violation of Vehicle
14 Code section 23152, subdivision (a), and driving with a blood alcohol of .08 percent or
15 higher in violation of Vehicle Code section 23152, subdivision (b).

16 (h) On or about December 21, 2005, respondent pled guilty to all
17 counts. Imposition of sentence was suspended and respondent was placed on 3 years
18 informal probation with various terms and conditions.

19 **SECOND CAUSE FOR DENIAL OF APPLICATION**

20 **(Fraudulent, Dishonest and/or Corrupt Acts)**

21 (14) Respondent's application is further subject to denial under sections
22 3732 and 3750, subdivision (j), of the Code, in that he committed fraudulent, dishonest,
23 and/or corrupt acts as described in paragraph 13, above, which is hereby incorporated by
24 reference and realleged as if set forth hereinafter.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Respiratory Care Board issue a decision:

1. Denying the application of JUSTIN JOHN BENTON for a Respiratory Care Practitioner License;

2. Directing Justin John Benton to pay the Respiratory Care Board of California the costs of the investigation and enforcement of this case, and if placed on probation, the costs of probation monitoring; and,

3. Taking such other and further action as deemed necessary and proper.

DATED: September 8, 2008

Original signed by Liane Zimmerman for:
STEPHANIE NUNEZ
Executive Officer
Respiratory Care Board of California
Department of Consumer Affairs
State of California
Complainant